

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

PATRICK D. COANDO,)
Petitioner,) Case No. 2:05-CV-620 TS
v.) District Judge Ted Stewart
STATE OF UTAH,) **MEMORANDUM DECISION**
Respondent.) Magistrate Judge Paul Warner

Petitioner, Patrick D. Coando, has filed a habeas corpus petition. See 28 U.S.C.S. § 2254 (2007). This is Petitioner's second habeas petition attacking this particular conviction. He attacks this conviction similarly to how he did the first time. The first petition was recently denied because the Court lacked jurisdiction over the case as Petitioner is not "in custody" under this conviction and, alternatively, because of Petitioner's failure to exhaust his state court remedies and application of the *Younger* abstention doctrine. *Coando v. Utah*, No. 2:04-CV-963 DB (D. Utah June 16, 2007).

Second or successive habeas petitions, such as this one, cannot be filed in district court until the petitioner "move[s] in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C.A. § 2244(b)(3)(A). When a second or successive § 2254 petition is filed in a district court without the necessary appellate court sanction, it must be transferred to the proper court. See *id.* § 1631; *Coleman v. United States*, 106 F.3d 339, 341 (10th Cir.

1997). Petitioner has not suggested in any way that he received the necessary sanction.

IT IS THEREFORE ORDERED that this second or successive petition be transferred to the United States Court of Appeals for the Tenth Circuit.

DATED this 27th day of June, 2007.

BY THE COURT:


TED STEWART
United States District Judge